

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff – Applicant,

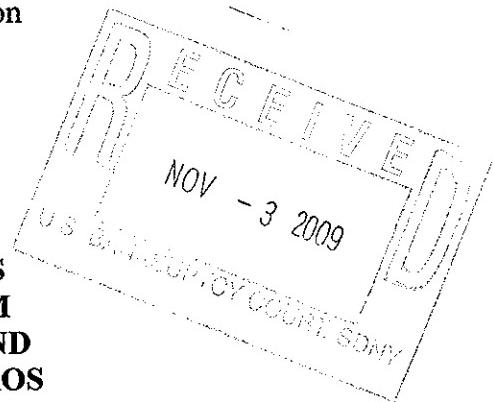
v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789-BRL

SIPA Liquidation



**OPPOSITION TO TRUSTEE'S  
DETERMINATION OF CLAIM  
FILED BY RICHARD MOST AND  
STACY TROSCH MOST, JTWROS**

Richard Most and Stacy Trosch Most, JTWROS ("Most"), by their attorney James J. Moylan, files their Objection to Trustee's Determination of Claim, attached as Exhibit A hereto, on the grounds that the Trustee's determination that no credit balance is in the account or that the Mosts are not entitled to the SIPC coverage for the cash and securities in their JTWROS Account is contrary to the Securities Investor Protection Act and related laws and regulations.

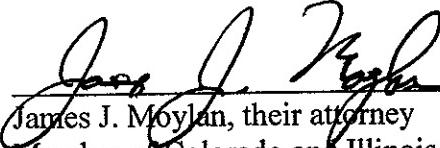
Because the Mosts are similarly situated to the other Madoff Investment Securities, LLC's customers whose claims have been denied or challenged by the SIPC Trustee, the Mosts

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

will not set forth the "net equity" and related arguments already of record in this proceeding and incorporated herein by this referenced.

Respectfully submitted,  
RICHARD MOST AND STACY TROSCH  
MOST, JTWRos

By:

  
\_\_\_\_\_  
James J. Moylan, their attorney  
Member of Colorado and Illinois Bars\*

**OF COUNSEL:**

JAMES J. MOYLAN AND ASSOCIATES, P.C.  
Post Office Box 775965  
Tree Haus  
31685 Inca Way  
Steamboat Springs, CO 80477-5965  
(970) 870-0730; (970) 870-0736 – FAX

---

\* Motion to Appear Pro Hac Vice will be filed if ordered by the Court.

# EXHIBIT

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008<sup>1</sup>**

**NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM**

October 19, 2009

Richard Most and Stacy Trosch Most JT WROS  
PO Box 880471  
Steamboat Springs, CO 80488

Dear Richard Most and Stacy Trosch Most JT WROS:

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC (“BLMIS”) is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. (“SIPA”), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1ZA778 designated as Claim Number 004862:

Your claim for a credit balance of \$6,071.74 and for securities is **DENIED**. No securities were ever purchased for your account.

Further, based on the Trustee’s analysis, the amount of money you withdrew from your account at BLMIS (total of \$635,000.00), as more fully set forth in Table 1 annexed hereto and made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$436,530.77). As noted, no securities were ever purchased by BLMIS for your account. Any and

---

<sup>1</sup> Section 78III(7)(B) of SIPA states that the filing date is “the date on which an application for a protective decree is filed under 78eee(a)(3),” except where the debtor is the subject of a proceeding pending before a United States court “in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term ‘filing date’ means the date on which such proceeding was commenced.” Section 78III(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

all profits reported to you by BLMIS on account statements were fictitious.

Since there were no profits to use either to purchase securities or to pay you any money beyond the amount that was deposited into your BLMIS account, the amount of money you received in excess of the deposits in your account (\$198,469.23) was taken from other customers and given to you. Accordingly, because you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your claim is **DENIED** in its entirety.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.

Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by the Trustee against you.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court **and** the Trustee within **THIRTY DAYS** after October 19, 2009, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

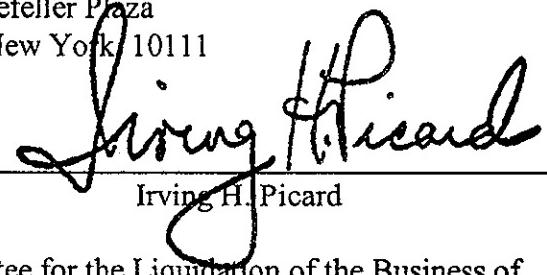
**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111

  
\_\_\_\_\_  
Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities LLC

cc: James J. Moylan, Esq.  
James J. Moylan and Associates, P.C.  
PO Box 775965  
Tree Haus  
31685 Inca Way  
Steamboat Springs, CO 80477-5965

DEPOSITS		
<hr/>		
DATE	TRANSACTION DESCRIPTION	AMOUNT
12/23/1992	CHECK	\$100,000.00
7/22/1993	CHECK	\$7,530.77
7/7/1995	CHECK	\$9,000.00
7/19/1995	CHECK	\$9,000.00
1/4/1996	CHECK	\$20,000.00
3/4/1997	CHECK	\$10,000.00
5/19/1997	CHECK	\$20,000.00
10/10/1997	CHECK	\$10,000.00
10/24/2000	CHECK	\$40,000.00
8/20/2001	CHECK	\$11,000.00
12/10/2001	CHECK	\$4,000.00
10/8/2002	CHECK	\$22,000.00
10/25/2002	CHECK	\$18,000.00
3/30/2006	CHECK	\$30,000.00
12/28/2006	CHECK	\$46,000.00
2/6/2007	CHECK	\$30,000.00
3/12/2007	CHECK	\$50,000.00
<b>Total Deposits:</b>		\$436,530.77
<hr/>		
WITHDRAWALS		
<hr/>		
DATE	TRANSACTION DESCRIPTION	AMOUNT
6/15/2001	CHECK	(\$15,000.00)
11/20/2002	CHECK	(\$25,000.00)
2/17/2004	CHECK	(\$25,000.00)
8/3/2004	CHECK	(\$20,000.00)
8/25/2004	CHECK	(\$150,000.00)
8/8/2006	CHECK	(\$40,000.00)
8/9/2006	CHECK	(\$40,000.00)
8/25/2006	RETURNED CHECK	\$40,000.00
4/3/2007	CHECK	(\$25,000.00)
6/8/2007	CHECK	(\$20,000.00)
7/3/2007	CHECK	(\$20,000.00)
7/11/2007	CHECK	(\$200,000.00)
5/15/2008	CHECK	(\$20,000.00)
10/7/2008	CHECK	(\$75,000.00)
<b>Total Withdrawals:</b>		(\$635,000.00)
<hr/>		
<b>Total deposits less withdrawals:</b>		(\$198,469.23)

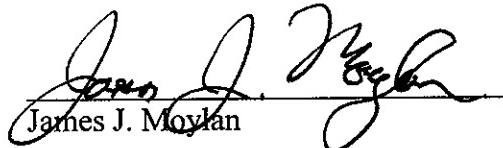
4/13/1999	CHECK	(\$28,839.44)	(\$28,839.44)
7/8/1999	CHECK	(\$43,227.87)	(\$43,227.87)
10/8/1999	CHECK	(\$19,359.35)	(\$19,359.35)
1/6/2000	CHECK	(\$23,387.36)	(\$23,387.36)
4/7/2000	CHECK	(\$32,100.80)	(\$32,100.80)
7/7/2000	CHECK	(\$20,141.37)	(\$20,141.37)
10/11/2000	CHECK	(\$13,348.99)	(\$13,348.99)
1/10/2001	CHECK	(\$12,301.18)	(\$12,301.18)
4/6/2001	CHECK	(\$28,558.33)	(\$28,558.33)
7/9/2001	CHECK	(\$19,512.94)	(\$19,512.94)
10/9/2001	CHECK	(\$13,667.66)	(\$13,667.66)
1/11/2002	CHECK	(\$21,059.30)	(\$21,059.30)
4/10/2002	CHECK	(\$7,316.28)	(\$7,316.28)
7/8/2002	CHECK	(\$26,038.25)	(\$26,038.25)
10/7/2002	CHECK	(\$33,374.88)	(\$33,374.88)
1/10/2003	CHECK	(\$11,774.28)	(\$11,774.28)
4/9/2003	CHECK	(\$12,572.60)	(\$12,572.60)
7/8/2003	CHECK	(\$16,307.46)	(\$16,307.46)
10/9/2003	CHECK	(\$20,402.91)	(\$20,402.91)
1/8/2004	CHECK	(\$8,430.36)	(\$8,430.36)
4/8/2004	CHECK	(\$12,018.10)	(\$12,018.10)
7/7/2004	CHECK	(\$19,243.14)	(\$19,243.14)
10/7/2004	CHECK	(\$21,639.74)	(\$21,639.74)
1/7/2005	CHECK	(\$15,913.11)	(\$15,913.11)
4/7/2005	CHECK	(\$16,745.85)	(\$16,745.85)
7/7/2005	CHECK	(\$17,776.84)	(\$17,776.84)
10/7/2005	CHECK	(\$16,154.62)	(\$16,154.62)
1/9/2006	CHECK	(\$25,649.91)	(\$25,649.91)
4/7/2006	CHECK	(\$19,893.43)	(\$19,893.43)
7/10/2006	CHECK	(\$22,042.69)	(\$22,042.69)
10/6/2006	CHECK	(\$38,880.61)	(\$38,880.61)
1/8/2007	CHECK	(\$28,956.49)	(\$28,956.49)
4/4/2007	CHECK	(\$25,033.84)	(\$25,033.84)
7/6/2007	CHECK	(\$32,908.45)	(\$32,908.45)
10/4/2007	CHECK	(\$34,856.64)	(\$34,856.64)
1/8/2008	CHECK	(\$28,894.94)	(\$28,894.94)
4/7/2008	CHECK	(\$13,555.69)	(\$13,555.69)
7/7/2008	CHECK	(\$61,944.22)	(\$61,944.22)
10/6/2008	CHECK	(\$16,470.59)	(\$16,470.59)
<b>Total Withdrawals:</b>		(\$1,305,189.28)	(\$1,305,189.28)
<b>Total deposits less withdrawals:</b>		(\$175,189.28)	(\$242,372.25)

**CERTIFICATE OF SERVICE**

I, James J. Moylan, an attorney licensed to practice law in the states of Colorado and Illinois, hereby certify that I caused ***Richard Most and Stacy Trosch Most, JTWRROS' Objection to Trustee's Determination of Claim***, to be served on:

Irving H. Picard, Esq., Trustee  
c/o Baker & Hostetler, LLP  
45 Rockefeller Plaza  
New York, NY 10011

Priority Mail and First Class, as indicated, before the hour of 5:00 p.m. on this 30<sup>th</sup> day of October, 2009.



The image shows a handwritten signature in black ink, which appears to read "James J. Moylan". The signature is fluid and cursive, with a horizontal line drawn through it below the signature itself.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff – Applicant,

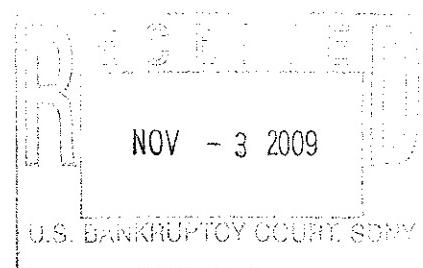
v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789-BRL

SIPA Liquidation



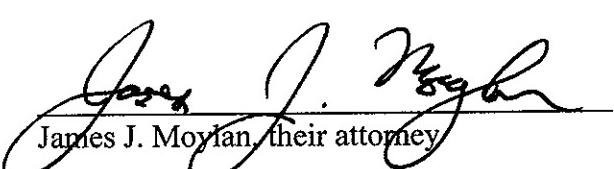
**NOTICE OF FILING**

To: Irving H. Picard, Esq. Trustee  
c/o Baker & Hostetler, LLP  
45 Rockefeller Plaza  
New York, NY 10011

PLEASE TAKE NOTICE that on October 30, 2009, there was sent, via First Class Mail, for filing with the United States Bankruptcy Court, Southern District of New York, ***Richard Most and Stacy Trosch Most, JTWROS' Objection to Trustee's Determination of Claim***, a copy of which is attached and herewith served upon you.

Respectfully submitted,  
RICHARD MOST AND STACY TROSCH  
MOST, JTWROS

By:

  
James J. Moylan, their attorney

**OF COUNSEL:**

JAMES J. MOYLAN AND ASSOCIATES, P.C.  
Post Office Box 775965  
Tree Haus  
31685 Inca Way  
Steamboat Springs, CO 80477-5965  
(970) 870-0730; (970) 870-0736 – FAX